

Before the
Federal Communications Commission
Washington, D.C. 20554

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|-----------------------|---|----------------------------|
| In the Matter of |) | |
| |) | |
| Cingular Wireless LLC |) | File No. EB-02-TS-003 |
| |) | NAL/Acct. No. 200232100001 |
| |) | FRN 0004-9792-33 |

ORDER

Adopted: May 2, 2002

Released: May 9, 2002

By the Commission: Chairman Powell and Commissioners Abernathy, Copps and Martin issuing a joint statement.

1. In this Order, we adopt a Consent Decree terminating an investigation into possible violations by Cingular Wireless LLC (“Cingular”) of the enhanced 911 (E911) Phase II provisions of Section 20.18 of the Commission’s Rules (“Rules”).¹

2. The Commission and Cingular have negotiated the terms of a Consent Decree that would resolve this matter and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist as to whether Cingular possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the terms of the Consent Decree, we find that the public interest would be served by approving the Consent Decree and terminating the investigation into Cingular’s possible violations of the E911 Phase II provisions of Section 20.18 of the Rules.

5. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j) and 503(b) of the Communications Act of 1934, as amended,² that the attached Consent Decree **IS ADOPTED**.

¹ 47 C.F.R. § 20.18.

² 47 U.S.C. §§ 154(i), 154(j) and 503(b).

6. Cingular shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232100001 and FRN 0004-9792-33.

7. **IT IS FURTHER ORDERED** that the Commission investigation into the matter described herein **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that the Secretary **SHALL SIGN** the Consent Decree on behalf of the Commission.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

CONSENT DECREE

The Federal Communications Commission (“FCC”) and Cingular Wireless LLC (“Cingular”) hereby enter into a Consent Decree resolving possible violations by Cingular of the E911 Phase II rules as set forth in Section 20.18 of the Commission’s Rules. 47 C.F.R. § 20.18.

Statement of Facts

1. Under Phase II of the FCC’s wireless E911 rules, wireless carriers are required to meet certain benchmarks as of October 1, 2001. Per referral by the Commission on October 12, 2001, the Enforcement Bureau began an investigation into whether Cingular was in compliance with the October 1, 2001 benchmarks specified in the Commission’s E911 Phase II rules.

Terms of Settlement

2. For purposes of this Consent Decree the following definitions shall apply:
- (a) “Commission” or “FCC” means the Federal Communications Commission;
 - (b) “Parties” means Cingular Wireless LLC and the Commission;
 - (c) “Cingular” means Cingular Wireless LLC, its subsidiaries, affiliates and any covered carriers listed in its waiver request filed on August 30, 2001, and any successors or assigns;
 - (d) “Adopting Order” means an order of the FCC adopting this Consent Decree;
 - (e) “Effective Date” means the date on which the FCC releases the Adopting Order;
 - (f) “Final Order” means the status of the Adopting Order after the period for administrative and judicial review has lapsed;
 - (g) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations;
 - (h) “Act” means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (i) “Valid PSAP Request” means a Public Safety Answering Point (“PSAP”) request for Phase I or Phase II service as defined in the Commission’s rules governing E911 and any orders of the Commission interpreting such rules.

3. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the FCC by incorporation of such provisions by reference in an Adopting Order.

4. The Parties agree that this Consent Decree shall become effective on the date on which the FCC releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission and any violation of the terms of this Consent Decree shall constitute a violation of a Commission order, entitling the FCC to exercise any and all rights and to seek any and all remedies authorized by law for the enforcement of a Commission order.

5. Cingular agrees that the FCC has jurisdiction over the matters contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

6. The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between Cingular and the FCC regarding possible violations of the E911 Phase II network rules for its Time Division Multiple Access ("TDMA"), Advanced Mobile Phone Service ("AMPS"), and TDMA/AMPS networks. In consideration for termination by the Commission of its investigation into whether Cingular has violated the E911 Phase II rules for its TDMA, AMPS, and TDMA/AMPS networks, and in accordance with the terms of this Consent Decree, Cingular agrees to the terms set forth herein.

7. In express reliance on the covenants and representations in this Consent Decree, the FCC agrees to terminate its investigation without any finding of liability on the part of Cingular.

8. Cingular agrees to comply with E911 Phase II rules modified as follows:

(a) First, Cingular agrees:

- (1) To deploy a Phase II compliant technology at a minimum of 1,000 cell sites by November 15, 2002.
- (2) To deploy a Phase II compliant technology at a minimum of 2,000 cell sites and provide Phase II service at all these sites by December 31, 2002.
- (3) To deploy a Phase II compliant technology at a minimum of 4,000 cell sites and provide Phase II service at all these sites by June 30, 2003.
- (4) To deploy a Phase II compliant technology at a minimum of 6,000 cell sites by December 31, 2003, if necessary to meet a PSAP request pending more than six months as of that date.
- (5) To deploy a Phase II compliant technology at a minimum of 8,000 cell sites by June 30, 2004, if necessary to meet a PSAP request pending more than six months as of that date.
- (6) For any valid PSAP requests for Phase II compliant service on its TDMA, AMPS, or TDMA/AMPS network received by Cingular on or before June 30, 2001, Cingular must provide its Phase II compliant service to 100% of those PSAPs' coverage areas by April 1, 2003.³
- (7) For any valid PSAP requests for Phase II compliant service on its TDMA, AMPS, or TDMA/AMPS network received by Cingular after June 30, 2001, but on or before February 28, 2002, Cingular must provide its Phase II compliant service to 100% of those PSAPs' coverage areas by April 1, 2003.
- (8) For valid PSAP requests received after February 28, 2002, but on or before September 30, 2002, Cingular must provide its Phase II compliant service to 50% of those PSAPs' coverage areas by April 1,

³ In this regard, Cingular agrees that its Phase II service must be compliant with 47 C.F.R. § 20.18.

2003, and to 100% of those PSAPs' coverage areas by November 30, 2003.

- (9) For valid PSAP requests received after September 30, 2002, Cingular must provide its Phase II compliant service to 50% of those PSAPs' coverage areas within six months of receipt of such request and to 100% of those PSAPs' coverage areas within 15 months of receipt of a PSAP request.

(b) Second, Cingular agrees that its classification of a PSAP request as invalid will not insulate it from enforcement action if the Commission determines that the request was valid.

(c) Third, Cingular states that it is relying on vendor representations in agreeing to the deployment schedule set forth herein and for its belief that a network based solution will satisfy the Commission's accuracy requirements.

(d) Fourth, Cingular agrees that in the event it fails to comply with any of the benchmarks set forth in paragraph 8(a)(1) through (5), it will make a voluntary contribution to the United States Treasury in the amount of \$300,000 for the first missed benchmark, \$600,000 for the second missed benchmark and \$1,200,000 for the third missed benchmark and any subsequently missed benchmarks. Any such voluntary contribution will be made within 30 days of the missed benchmark or within 5 business days of a Commission decision denying a request to modify the benchmark date, whichever is later, by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232100001, as well as Cingular's FCC Registration Number ("FRN") 0004-9792-33.

(e) Fifth, Cingular must file Quarterly Reports, on its compliance with the terms and conditions of this Consent Decree and the wireless E911 rules, as set forth in paragraphs 9-10 below.

(f) Sixth, with its August 1, 2002 Quarterly Report, Cingular must submit a Phase II compliant rollout plan describing how it will prioritize PSAP requests and deploy Phase II compliant service in TDMA, AMPS, and TDMA/AMPS markets.

(g) Seventh, Cingular represents that it has completed its Lucent switch upgrades by April 1, 2002 and agrees that it must complete all other switch upgrades by August 1, 2002.

9. To assist in monitoring and enforcing each of the conditions imposed on Cingular, Cingular must file Quarterly Reports with the Chief of the Enforcement Bureau and the Chief of the Wireless Telecommunications Bureau.⁴

10. Specifically, the Quarterly Reports must contain the following information:

⁴ To the extent Cingular believes any of the required information is proprietary, it may file a request for confidential treatment pursuant to 47 C.F.R. § 0.459. If confidential treatment is sought, redacted versions of the reports still must be served as required by the Consent Decree.

(a) The Report must include information on all pending Phase I and Phase II requests in TDMA, AMPS, and TDMA/AMPS markets, including the name of the PSAP, the date the request was received by Cingular, whether or not Cingular considers it valid, and its status. To the extent any PSAP request for Phase II service in a TDMA, AMPS, or TDMA/AMPS market received after September 30, 2002 has been pending for more than six months, Cingular must identify the specific reasons underlying the failure to provide the requested service, the steps Cingular has taken to resolve the problem(s), and the anticipated date of full completion of the work necessary to deliver the requested information to the PSAP in question. If Cingular believes there are questions concerning a PSAP's compliance with the conditions necessary for a valid Phase I or II request, such as its readiness to receive and utilize Phase I or Phase II information, it should identify specifically the question and the efforts it has undertaken, including the communications it has had with the PSAP, to resolve the question. Cingular agrees to serve this report on the Association of Public-Safety Communications Officials-International, Inc., the National Emergency Number Association and the National Association of State Nine One One Administrators.⁵ In addition, the Commission will post this information on its website.⁶ The parties agree that the Wireless Telecommunications Bureau may require any additional steps necessary to ensure PSAP access to this information.

(b) Each Quarterly Report also must contain statements regarding whether Cingular has met each deployment benchmark in its TDMA, AMPS, and TDMA/AMPS markets and any other condition falling due in the period immediately preceding the Quarterly Report, and, if not, the reasons for its failure to comply. These benchmarks and conditions include the following:

- (1) a statement of whether Cingular's Phase II service meets the accuracy requirement of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls;
- (2) for August 1, 2002 benchmark, a statement of whether Cingular has completed its switch upgrades;
- (3) for the November 15, 2002 benchmark, a statement of whether Cingular has deployed a Phase II compliant technology at 1,000 cell sites;
- (4) for the December 31, 2002 benchmark, a statement of whether Cingular has deployed a Phase II compliant technology at 2,000 cell sites and whether Cingular is providing Phase II service at these sites;
- (5) for the April 1, 2003 benchmarks, a statement of whether (i) for any valid PSAP requests for Phase II service on its TDMA or TDMA/AMPS network received by Cingular on or before February 28, 2002, Cingular has provided its Phase II compliant service to 100% of those PSAPs' coverage areas or population; and (ii) for any

⁵ Cingular should serve the Executive Director of each organization as well as its counsel, to the extent such counsel has been identified in the record in response to Cingular's request for relief.

⁶ See www.fcc.gov/e911.

valid PSAP request for Phase II service on its TDMA or TDMA/AMPS network received by Cingular after February 28, 2002, but on or before September 30, 2002, Cingular has provided its Phase II compliant service to 50% of those PSAPs' coverage areas or population.

- (6) for the June 30, 2003 benchmark, a statement of whether Cingular has deployed a compliant Phase II technology at 4,000 cell sites;
- (7) for the November 30, 2003 benchmark, a statement of whether, for any valid PSAP requests for Phase II service on its TDMA or TDMA/AMPS network received by Cingular after February 28, 2002, but on or before September 30, 2002, Cingular has provided its Phase II compliant service to 100% of those PSAPs' coverage areas or population;
- (8) for the December 31, 2003 benchmark, a statement of whether Cingular has deployed a compliant Phase II technology at 6,000 cell sites;
- (9) for the June 30, 2004 benchmark, a statement of whether Cingular has deployed a compliant Phase II technology at 8,000 cell sites;
- (10) For any valid PSAP request received after September 30, 2002, a statement of whether Cingular has provided its Phase II compliant service to 50% of those PSAPs' coverage areas or population within six months of receipt of the request and to 100% of those PSAPs' coverage areas or population within 15 months of receipt of the request.

(c) Cingular must support each Quarterly Report with an affidavit or declaration, from an officer or director of Cingular, attesting to the truth and accuracy of the Report.⁷

(d) To the extent that Cingular anticipates that it will fail to satisfy any one of the conditions, it must advise the Commission of the problem. Seeking relief from that condition will not insulate Cingular from possible enforcement in cases where Cingular has violated a condition of this Consent Decree. Cingular agrees that the Commission will not entertain requests for additional relief that seek changes in the conditions imposed herein absent extraordinary circumstances.

(e) To the extent Cingular cannot provide the information required under this paragraph in its next Quarterly Report following the respective benchmark, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information.

⁷ See 47 C.F.R. § 1.16. As required by Section 20.18(h)(1) of the Commission's Rules, Cingular's network-based technology for delivering E911 Phase II location information must meet the following standards for location accuracy: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls. Cingular will derive its network-wide location accuracy by selecting the 67 percent and 95 percent accuracy numbers from a set of test data weighted in accordance with OET Bulletin No. 71, Guidelines for Testing and Verifying the Accuracy of Wireless E911 Location Systems, Apr. 12, 2000.

Such request must be filed as early as possible before the Quarterly Report filing date, but not later than 10 business days prior to the Quarterly Report filing date. The request must specify the reasons for the request.

(f) Cingular's Quarterly Reports are due February 1, May 1, August 1, and November 1 of each year, beginning August 1, 2002 and continuing through February 1, 2006. To the extent that Cingular cannot provide any of the information required in its final report, it must file with the Chief, Enforcement Bureau, a request for extension of time to file the required information in accordance with the procedures set forth above.

11. To the extent unexpected problems arise affecting Cingular's ability to perform any of the requirements set forth in paragraph 8(a) in the period between Quarterly Reports, Cingular agrees to notify the Commission in writing through a supplementary filing to be filed within 30 days of Cingular's discovery of the problem. This supplemental filing must include specific details regarding the problems Cingular has encountered affecting its ability to comply with the benchmark requirements.

12. The Parties agree that the Chiefs of the Wireless Telecommunications Bureau and the Enforcement Bureau may require Cingular to provide additional information in its Quarterly Reports, in order to evaluate Cingular's compliance with the terms and conditions of the Consent Decree, and its progress in deploying Phase I and Phase II services.

13. Cingular agrees that it is required to comply with each individual condition of this Consent Decree, including the reporting requirements set forth above. Each specific benchmark and Quarterly Report is a separate condition of the Consent Decree as approved. In addition, Cingular remains subject to all other requirements of the Commission's wireless E911 rules apart from those specifically modified in this Consent Decree, and ultimately responsible for providing timely, compliant Phase II service. To the extent that Cingular fails to satisfy any condition or Commission rule, in the absence of Commission alteration of the condition or rule, it will be deemed noncompliant and referred to the Commission's Enforcement Bureau for possible action, including but not limited to revocation of the relief, a requirement to deploy an alternative ALI technology, letters of admonishment or forfeitures. At that time, an assertion that a vendor, manufacturer, or other entity was unable to supply compliant products will not excuse noncompliance. However, Cingular's "concrete and timely" actions taken with a vendor, manufacturer, or other entity may be considered as possible mitigation factors in such an enforcement context. To the extent the Commission, in the context of petitions for reconsideration pending in *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Nextel Communications, Inc.*, 16 FCC Rcd 18277 (2001), *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Cingular Wireless LLC*, 16 FCC Rcd 18305 (2001), or *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Request for Waiver by Verizon Wireless*, 16 FCC Rcd 18364 (2001), or in connection with any court order on review of those proceedings, imposes a standard regarding compliance and enforcement action that is different than set forth in this Consent Decree, that subsequent standard shall apply.

14. Cingular agrees to make a voluntary contribution to the United States Treasury in the amount of One Hundred Thousand Dollars (\$100,000) within thirty (30) days after the effective date of the Adopting Order. Cingular will make this contribution without further protest or recourse by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, Forfeiture

Collection Section, Finance Branch, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232100001, as well as Cingular's FCC Registration Number ("FRN") 0004-9792-33.

15. The FCC agrees that it will not institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Cingular for violation of the E911 Phase II rules for its TDMA, AMPS, and TDMA/AMPS networks except as consistent with the provisions of this Consent Decree. The FCC also agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this proceeding through the date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Cingular with respect to its basic qualifications, including the character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the FCC from instituting new investigations or enforcement proceedings against Cingular pursuant to Sections 4(i), 403 and 503 of the Act, 47 U.S.C. §§ 4(i), 403 and 503, in the event of any alleged future misconduct for violation of this Consent Decree or for violation of the E911 Phase II rules as consistent with the provisions of this Consent Decree.

16. Nothing in this Consent Decree shall prevent the FCC from adjudicating complaints filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, against Cingular or its subsidiaries for alleged violations of Section 20.18 of the Rules, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the FCC's adjudication of that complaint will be based solely on the record developed in that proceeding.

17. Cingular waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

18. If either Party (or the United States on behalf of the FCC) brings a judicial action to enforce the terms of the Adopting Order, neither Cingular nor the FCC shall contest the continuing validity of the Consent Decree or Adopting Order. Cingular retains the right to challenge the Commission's interpretation of the Consent Decree or any terms contained therein.

19. Cingular agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters discussed in this Consent Decree.

20. In the event that this Consent Decree is rendered invalid by any court of competent jurisdiction, this Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

21. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act and the Rules, including Section 20.18 of the Rules. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Cingular does not admit any liability for violating Commission rules in connection with the matters that are the subject of this Consent Decree.

22. The Parties agree that any provision of the Consent Decree that would require Cingular to act in violation of a future rule or order adopted by the Commission will be superseded by such Commission rule or order.

23. This Consent Decree may be signed in counterparts.

For the Federal Communications Commission

For Cingular Wireless LLC

Marlene H. Dortch
Secretary

J.R. Carbonell
Senior Vice President and
General Counsel-Regulatory and Legal

Date

Date

**JOINT STATEMENT OF
CHAIRMAN MICHAEL K. POWELL AND COMMISSIONERS KATHLEEN Q.
ABERNATHY, MICHAEL J. COPPS AND KEVIN J. MARTIN**

RE: Cingular Wireless LLC.

We support today's Order adopting a Consent Decree terminating the investigation into possible violations of the Commission's Phase II E911 rules by Cingular Wireless. It is critically important that all the participants in our quest for full Phase II E911 compliance do their part to move forward in protecting American consumers. For carriers this means meeting the benchmarks and deadlines set by the Commission. For Public Safety Answering Points this means equipping facilities so that they are prepared to receive Phase II information as quickly as possible. For the Commission this means enforcing our mandates.

In order to meet our responsibility the Commission must therefore be consistent and steadfast, as we have been here. We commend the Enforcement Bureau and Cingular Wireless for their hard work in negotiating a consent decree that will accelerate the pace of American consumers receiving the public safety benefits of Phase II E911. We also want to thank the public safety community for their ongoing input on E911 implementation, which has been invaluable at every stage of this process.